

Targeted Case Management and Rehabilitative Services Option

November 2002

Introduction

The 2002 Joint Chairmen's Report directed the Department of Health and Mental Hygiene (DHMH) along with the Department of Human Resources (DHR) and the Department of Juvenile Justice (DJJ) to give a status report on its progress in submitting State Plan Amendments (SPAs) to seek federal matching funds for case management services and rehabilitative or therapeutic services currently provided by the Department of Human Resources (DHR) and/or the Department of Juvenile Justice (DJJ). If approved by the Centers for Medicare and Medicaid Services (CMS), the State Plan Amendments would allow Maryland to receive federal matching funds for services currently provided. This would not expand services. This report describes both services for which a federal match is being sought and provides a progress report on each one.

Background

In October 1999, the Department of Budget and Management (DBM), DHR, DJJ and DHMH entered into an agreement with Maximus, a consulting group, to explore the possibility of securing federal funds for case coordination activities provided by DHR and DJJ to Medicaid eligible children. The purpose of the task was to review current activities provided by DJJ and DHR to determine if it was possible to claim federal matching funds through Medicaid.

Two State Plan Amendments (SPAs) were developed by DHMH, DHR, and DJJ: (1) to allow federal reimbursement for case management services provided by DHR for children placed in foster care, and (2) to allow federal reimbursement for case management services provided by DJJ for children placed in State custody. Maximus and state staff made the decision to work on the DHR initiative first due to the complexity of the issue. Maximus and the state staff would then be able to use the DHR initiative, once approved, as a model for DJJ to assist in streamlining that process. The DHR SPA 02-05 was sent to CMS on December 21, 2001 (Attachment A). This SPA seeks federal matching funds for targeted case management (TCM) provided to abused and neglected children who are placed in foster care.

CMS requested further information regarding this SPA which DHMH, DHR, and Maximus provided in a response that was submitted on May 23, 2002 (Attachment B). In this response, greater detail was provided to answer specific questions raised by CMS. The primary concerns that were addressed regarded issues of freedom of choice, unit of service to be used, how the service was to be documented, and the issue of third party liability. CMS appeared to be most concerned with the issue of duplication of payment in regard to current DHR funded Title IV-E program activities, because these services are already paid for under Title IV-E. To alleviate the concern and to expedite the approval

process, a decision was made to exclude IV-E eligible recipients from the group to be included under SPA 02-05. Recently, the federal government has been more concerned about state efforts to maximize federal payments. Hence, the federal government is more closely scrutinizing such proposals from states.

Although DHMH, DHR, and Maximus believed that these issues were addressed adequately, CMS sent a disapproval letter to DHMH (Attachment C) on August 26, 2002 citing three reasons for this disapproval, which will be discussed later.

DHMH, DHR and Maximus have responded to each of these CMS objections. A petition for reconsideration of the SPA, which was sent to CMS, is included as Attachment D.

Concurrent with the TCM State Plan Amendment, DHMH, DHR, DJJ and Maximus have been pursuing a SPA for rehabilitative services for children in state care. This is the second service for which DHMH was directed to seek matching federal funds for services that are being provided to children in state custody. This option would provide a federal match for the therapeutic services provided to children who are in the care of DHR and DJJ. As with the TCM State Plan Amendment, a decision was made to pursue the therapeutic services provided to children in foster care group homes first before examining the rehabilitative services provided to children who are in the care of DJJ. The SPA for children in the care of DHR would then be used as a model for a SPA for children in the care of DJJ. This report first discusses the targeted case management SPA and next discusses the rehabilitative services option.

Targeted Case Management

The JCR Report to the General Assembly on Targeted Case Management submitted September 2001 by DHMH, described the three types of case management services that assist Medicaid eligible individuals in gaining access to needed medical, social, educational, and other services. Federal law allows states to provide three kinds of case management services: (1) targeted case management (TCM); (2) administrative case management; and (3) case management as a home and community-based service (HCBS) waiver program service. Under TCM, federal law allows states to provide case management services to specific populations within Medicaid or in separate geographic regions within the State.

There are two Medicaid case management requirements that presented barriers to the SPA application: (1) an individual must be allowed freedom of choice of case management providers; and (2) to ensure that the federal government is not paying for services provided to an individual that are already being paid for by another source. The second issue is defined as duplication of payment and is an obvious violation of federal law. Federal law requires that states will not claim federal matching funds for case managing an individual for the same services paid for by another source. This issue is of paramount importance to CMS.

Under TCM, Medicaid may provide case management services for the coordination of Medicaid as well as non-Medicaid services. There are at least thirteen special services covered under targeted case management in addition to coordination of non-Medicaid services. Since 1986, Maryland has implemented several targeted case management programs. Currently, the Maryland Medicaid program has eight (8) TCM programs. The majority of these programs serve children. In addition to the eight TCM programs, many special needs Medicaid recipients receive case coordination through Maryland's Medicaid managed care program, HealthChoice, and the Rare and Expensive Case Management (REM) Program.

These TCM initiatives have allowed Maryland to bring in federal matching funds to support case management activities. One of the biggest challenges in implementing these case management programs is assuring that we are not violating federal law by claiming federal funds twice for the same case management services. This issue was addressed in the SPA for the foster care population that was submitted on December 21, 2001 (Attachment A) and in the regulations that were written to accompany this initiative. If CMS ultimately approves this SPA, DHMH, DHR, and DJJ will need to make sure that reimbursement will not be made for services if the participant is receiving the same case management services under another program. It is essential to comply with Federal law and to demonstrate compliance through accurate documentation. A lack of compliance with Federal law could result in future disallowances. It will be important to determine if present records provide sufficient documentation to support federal claiming, and if not, what would be the cost of increased record keeping and staff training. This same issue applies to the rehabilitative services option which is discussed in the following section.

Next Steps and Challenges for TCM

While DHMH, DHR, and Maximus have strenuously pursued the SPA for TCM, CMS has continued to raise issues that must be addressed. Despite the responses that were made to the initial SPA request, CMS sent a disapproval letter for the TCM SPA on August 24, 2002 (Attachment C) as stated previously. The issues noted in the disapproval letter are: (1) The services proposed by the State are not encompassed by the statutory definition of case management services found in section 1915(g)(2) of The Social Security Act; (2) The SPA provides for payments for services available without charge to the user, which is contrary to CMS policy and, (3) The SPA restricts beneficiary freedom of choice by limiting providers to employees of public welfare agencies. Two of these concerns, that it represents a duplication of payment for services and that it restricts freedom of choice, have already been addressed in the May 24th 2002 letter to CMS (Attachment B). The third reason for disapproval given by CMS, that the services proposed do not encompass the statutory definition of case management services found in 1915(g)(2) of the Social Security Act, was an issue that had not been raised by CMS in the previous request for further information but it is fully addressed in the response to the disapproval letter (Attachment D). It should be noted that a nearly identical disapproval letter for a TCM SPA was sent to the state of Illinois by CMS. This

indicates that CMS is placing these SPAs under great scrutiny and that these issues could be difficult to surmount.

The September 24, 2002 reconsideration letter to the CMS disapproval (Attachment D, pages 32 through 39 of this report) addresses each of these issues in detail. To summarize, CMS asserts in its disapproval that the services do not encompass the statutory definition of case management services primarily because these services are regarded by CMS as being indistinguishable from the direct and administrative services that are already provided by the foster care case worker as part of the State government's responsibility. DHMH cites SMDL #01-013 (which was included in the Appendix to last year's report) in its response to this issue. This letter specifies that states have the flexibility to target recipients of these case management services by using eligibility in another state welfare program, in this case foster care, to define the population receiving these services. Furthermore, states are specifically given the power (under ASMB C-10, the HHS Implementation guide for OMB Circular A-87) to determine which funds or combination of funds will be allocated to fund services under such programs. The DHMH response delineates the services that are provided and asserts that they are fully allowable expenses under Medicaid guidelines. Moreover, there will be no duplication of payment because only activities that qualify as TCM under SPA 02-05 can be claimed.

The second reason for disapproval of the TCM SPA given by CMS was that this SPA would provide for payment of services by the federal government which are provided without charge to the user and are the responsibility of the State which is contrary to CMS policy. This issue is rebutted in the September 24th reconsideration letter. Maryland assures CMS that recovery of funds through third party liability will be pursued and proves that the "issue of services available without charge" is not a valid one in this instance.

Third, the restriction of beneficiary freedom of choice is shown to be a non-issue in our estimation. The State asserts that the DHS case worker, as a foster care child's legal guardian, is authorized to exercise freedom of choice on behalf of the recipient of the services and will apply this same criteria in choosing TCM case managers for the children.

.Based on telephone conversations, current indications from CMS are that approval of these SPAs is becoming increasingly difficult. There has been some indication in conversations with CMS staff that previous SPA approvals may be revisited, with the possibility of future disallowances for these services. Maryland must be extremely cautious and diligent in pursuing these federal matching funds since there appears to be increased scrutiny of existing SPAs as well as an intense examination of every element of SPA applications. As we await a response to the initial disapproval of SPA 02-05 we are working diligently to prepare a SPA for the rehabilitative services option.

Rehabilitation Services Option

The other area in which additional federal claiming is being pursued is the rehabilitation services option. Under federal regulations, this option is used to assist Medicaid eligible individuals to receive remedial services recommended by a physician or other licensed practitioner for maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level (42CFR 440.130d). Rehabilitative services are one of the optional services that states are allowed to cover under Title XIX of the Social Security Act. These services cannot be limited to specific geographic regions or specific Medicaid populations as can targeted case management (TCM).

Rehabilitative Services are often difficult to classify and may appear under another Medicaid Service category, such as physical therapy. It is, therefore, difficult to distinguish what services would be covered under the Rehabilitation Services Option. However, it is essential to clearly define services in order to prevent duplication of payment and to maintain compliance with federal law. In conversations with CMS staff, we have learned that CMS is currently reviewing services claimed under this option and cautions that it is necessary to define the target population, the setting in which services are provided, the services provided, and the method of reimbursement in order to gain SPA approval. CMS personnel have offered during telephone conferences to advise us during the SPA process in order to flesh out some of the issues. However, documentation of the services provided is of paramount importance in claiming these federal funds.

Maryland has been providing services under the Rehabilitation Services Option for psychiatric rehabilitation since January 1995 (COMAR 10.09.59). Additionally, many services provided under Expanded Early and Periodic Screening, Diagnosis and Treatment (EPSDT) (COMAR 10.09.37.04) are essentially “rehabilitative services” although they are not defined as such. For example, the regulations describe physical therapy, chiropractic, alcohol and drug abuse treatment, mental health services, nutritional counseling, which are in essence “rehabilitative services” though they are classified as other types of services. There are many other services that are considered rehabilitative in nature that are currently provided by Maryland Medicaid which increases the complexity of this issue.

During the 2002 General Assembly session, Senator Van Hollen introduced Senate Bill 69 directing DHMH to strenuously pursue additional federal claiming by submitting SPAs to claim federal match for the TCM and rehabilitative services that are already being provided by the state. The Department of Legislative Services was directed to prepare a report examining the issues involved in claiming these activities. This report is included as Attachment E. A primary concern presented in the report is the need to have adequate documentation to show that the services being claimed are actually being delivered. The report concludes these options should only be pursued if the state can establish that adequate documentation can be provided to show that the services, which are claimed, are actually being provided to the child. Otherwise, the benefit of increased

federal claim may be overwhelmed by the State's cost of providing more documentation, a greater administrative burden, and increased staff training needs.

Thus, DHMH, DHR, and Maximus are currently reviewing records at foster care group homes to sample the structure of the records that are being kept to determine if they are adequate for federal claiming or if changes would be required. The issue of documentation is an important one. Documentation of foster care services was reviewed in a Performance Audit Report, which was released in May 2002 by the Department of Legislative Services. This report pointed to some existing problems with documentation of services to children who are in foster care and stated that services to these children could "often not be verified." This report provides more evidence of the need to carefully review what documentation is presently maintained to determine if it would be sufficient to meet federal requirements to secure matching federal funds for the proposed amendments.

As stated, the issue of adequate documentation of rehabilitative services is a significant one. A recent preliminary review of records at two group foster care homes in the Baltimore area, revealed a lack of standardization in the structure of the case records. It was a laborious effort to compare information between the case records kept at one home and those kept at another. A standardized format, as well as extensive staff training would no doubt be required in order to establish proper documentation to claim these federal funds. Additionally, the pertinent information which is required (social skills, counseling and other services) is not limited to one or two sections of the record, but is dispersed throughout the file, which is quite thick. Again, this could be addressed as records are standardized, but this could prove to be a huge task and would require the cooperation of the providers of the services.

In a federal transmittal, Medicaid State Operations Letter #92-46, the services, which may be included under rehabilitation services, are specified in greater detail than in the federal regulations. Examples of services that may be included are: basic living skills, social skills and counseling and therapy. These services are provided in the group homes, as the children placed there are in need of a more structured and therapeutic environment than is normally found in a family home. However, documenting that these services are provided, could be quite difficult and, again, would require a great deal of commitment on the part of the providers.

The potential resources needed to restructure the system of documentation and train providers in adequate record keeping may, therefore, outweigh the financial benefits of drawing down additional federal funds. While work has already been completed to create a system of documentation, concentrated staff time would be needed to train providers to use this tool. The current hiring freeze also likely would further hamper the State's ability in this area. Providers of rehabilitation services are generally outside of a medical model of care, and therefore do not have the same background in documentation as medical providers. This issue requires further investigation.

Similarly, there are complex issues in regard to the Medicaid billing process. Discussions have taken place with those responsible for MMIS programming. No changes can be made to the system until after the HIPPA modifications are made. These issues are extremely complex and will require expertise and manpower to resolve.

Next Steps and Challenges for Rehabilitation Option

As stated, in addition to pursuing the TCM SPA, DHMH and DHR are actively pursuing a SPA for the rehabilitative service option for children in foster care who are in the custody of DHR. DBM, DHMH, DHR, DJJ, and Maximus met in October 2002 to discuss progress on this initiative. It was determined that information must be obtained from the Interagency Rate Commission (IRC) to add more specificity regarding costs in the future. It would, however, be difficult to obtain more detailed information retroactively, and CMS has indicated that it would not likely approve the SPA.

Furthermore, the issue of documentation of services continues to be a significant factor as we pursue this federal funding. The report to Senator Van Hollen, (January 21, 2002 AttachmentE), stressed that the State must first determine what documentation is necessary to claim for rehabilitative services to children in foster care. It is hoped that as DHMH, DHR and Maximus continue to review records maintained by group foster care this issue can be further defined and resolved. We continue to be cautioned by the federal government that the issue of the adequacy of documentation is a major one if we are to successfully apply for federal funds. DHMH will pursue this initiative with DHR to determine the feasibility of submitting a SPA for the rehabilitative service option to CMS. DHMH plans to continue with these initiatives. DHMH will work with our sister agencies on this initiative or other initiatives that are proposed in order to maximize federal funds.

Conclusion

This report provides an overview of the issues involved in applying for these federal matching funds. Maryland has been very successful in the past in gaining approval for SPAs. We continue to expend staff time and resources in pursuing federal funds for TCM and the rehabilitation option. We will continue to aggressively pursue any opportunity for federal funding through every avenue available. However, we must caution that the existing climate surrounding increased federal funds is difficult given the increased scrutiny by the federal government of such proposals.